WHARTON (PHILIP) DUKE OF WHARTON.

HIS GRACE THE Duke of Wharton's SPEECH IN THE HOUSE of LORDS, ON THE Third Reading of the BILL *to Inflict Pains and Penalties on* FRANCIS *(late) Lord Biſhop of* ROCHESTER;

MAY *the* 15*th*, 1723.

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SERMON

THE Duke of Wharton's SPEECH IN THE HOUSE OF LORDS, &c.

SOME Words which have fallen from the Reverend Prelate, who ſpoke laſt, have made it, in ſome meaſure, neceſſary for me to trouble your Lordſhips with the Reaſons that induced me to differ with him in Opinion, and to give my Negative to the Bill now depending before us.

If I don't miſ-underſtand his Lordſhip (and if I ſhould miſtake his Meaning, I hope he will ſet me right) he was pleaſed to ſay, That Perſons without Doors would be apt to caſt different Reflections on the particular Behaviour of every Lord this Day; That thoſe who were for the paſſing of this Bill, would be accuſed of Malice and Partiality; And thoſe who were of contrary Sentiments, would be branded with Diſaffection to the preſent Happy Eſtabliſhment.

For my Part, I am far from thinking, that Conſiderations of this Nature will have the leaſt Weight with any of your Lordſhips; and am very certain, that every one, who gives his Vote on this important Occaſion, has attended, with the greateſt Care, to the Evidence that has been given at your Bar, which is the Foundation of this Day's Debate.

The Proofs that have been brought to ſupport the Charge, and the Biſhop's Defence, are to be thoroughly conſidered; and when your Lordſhips proceed according to the Rules of Juſtice, you will not fear, nor value, any Conſequences which may attend the diſcharging of your Duty.

So far I will venture to affirm, That the beſt Way to ſhew our Zeal to His Majeſty, and the preſent Government, is, To act, in all Caſes, both in our Judicial and Legiſlative Capacities, with that Honour and Impartiality we ought to flourish in this great Council of the Nation.

I could have wiſhed the Noble Lords who have given their Reaſons for the paſſing this extraordinary Law, would have entred into the particular Circumſtances of this Caſe, and conſidered it ſingly on its own Merits; But inſtead of ſpeaking on that Head, I cannot but take Notice, That they have wandered from that (which ought to have been their only Conſideration) into Learned Diſcourſes on Bills of this Nature in General.

I ſhall not trouble this Houſe with any Arguments againſt Attainders. Many Lords, of greater Weight and Abilities than myſelf, have already ſpoke fully to this Point in the preceding Debates.

I ſhall only ſo far agree with the Reverend Prelate, who ſpoke before me, That it is proper, that ſuch a Power of puniſhing by Bill, ſhould be veſted in the Legiſlature to be exerciſed on extraordinary Emergencies: But then I muſt add, If ever that Power is abuſed; if ever it is employed to deſtroy innocent Perſons, it is evident, That the Lives, Liberties, and Fortunes of every Subject in *Britain*, are in the utmoſt Danger, and liable to be ſacrificed to the Fury of a Party.

It has been admitted, That every Bill of Pains and Penalties is to ſtand upon its own Bottom; and that the paſſing of One Act of this Nature, is not to be brought as a Precedent for the ſupporting of Another, unleſs there be convincing Evidence to inforce each Caſe. And therefore the proper Conſideration now before us, is, Whether the Evidence offer'd againſt the Unfortunate Prelate is ſufficient to induce your Lordſhips to believe him Guilty of the heavy Crimes of which he ſtands accuſed?

My Lords, I ſhall take the Liberty of conſidering the whole Proofs that have been brought on this Occaſion, both by Way of Charge, Defence, Reply, and Rejoynder; and though I own myſelf very unequal to this Task, yet, ſince no other Lord, who could do it much better, has undertaken it, I think it my Duty, as a Peer, and as an *Engliſhman*, to lay it before your Lordſhips in the beſt Manner I am able.

The Method I ſhall obſerve for the more clear Stating of the Caſe, ſhall be to lay every particular Branch of Evidence before you, and to diſtinguiſh the ſeveral Parts of the Accuſation, and conſider them ſeparately, to avoid Confuſion, and to be the more exact in what I have to offer.

I hope I ſhall have your Lordſhips Indulgence for taking up ſo much of your Time as this will require, But I aſſure you, I ſhall endeavour to be as brief as the Nature of the Thing will admit, and will intrude on your Patience as little as poſſible.

I muſt alſo deſire your Lordſhips will pardon me, if I repeat ſeveral Arguments that have been uſed by the Council at the Bar; and if I even mention ſome Things which fell from me in the Debate on Mr. *Kelly*'s Bill, whoſe Caſe is very much interwoven with the preſent; ſo that it is almoſt impoſſible to avoid it.

Before I go any further, I cannot but ſay, That were theſe Crimes plainly proved againſt the Biſhop of *Rocheſter*, his ſacred Function and Station in the Church, would be Aggravations of his Guilt: But, as this is certain on the one Hand, ſo on the other, your Lordſhips will require very clear Demonſtration, before

before you can think it possible for a Bishop of the Protestant Church (who has signalized himself in Defence of the Reformation, and the only one of that Bench where he had lately the Honour of sitting, that ever wrote in Favour of *Martin Luther*) to engage into a Conspiracy for introducing Popery and Arbitrary Power amongst us.

My Lords, The Council for the Bill opened the Charge with acquainting the House, That it was only to be supported by producing of decyphered Letters full of Fictitious Names and Cant Words; They were so very fair as to confess, they had not one living Witness that could charge the Bishop with any thing, not even so much as a Letter under his own Hand; Therefore, on the first View, this Manner of condemning, on such kind of Evidence, ought to require our utmost Caution, lest we should establish a Method, which our Enemies may hereafter take to destroy the Greatest and most Innocent Subject in the Kingdom.

Mr. *Wearg* cited Two Cases, which he would willingly have us receive as Precedents to justify the admitting of Circumstantial Evidence: The one was, The Case of *Ashton*, who was condemned on Circumstances only; But, my Lords, This was before the Treason-Act was passed, which requires Two positive Witnesses, and nothing could induce the Legislature to pass that Law, but a thorough Conviction of the Danger that might attend the admitting of any Proofs which were not positive or certain.

The Second Case he cited, was that of *Harrison*, for the Murther of Dr. *Clinch*, and the Learned Gentleman tells you, that it was the pulling out of a Handkerchief that led to the Discovery of that Murder. It is very certain, Circumstances may lead to the Discovery of Evidence; But must be well supported before they can be converted into convincing Proofs.

The First Piece of Evidence that was offered at the Bar, was the Extracts of Letters from Abroad, which this House seems, in some measure, to have declared to be immaterial, when they did not so much as desire to see Copies of the whole Letters, nor the Originals, and even admitted one to be read which was Anonymous; But it will not be improper to observe, that through this whole Correspondence, the Bishop of *Rochester* is not named. And therefore I cannot see why they took up our Time with reading Papers quite Foreign from this Case; especially since every Body allows there has been a Conspiracy, which is the only Fact to be gathered from this Correspondence.

The next Point which was attempted to be proved, was, That Captain *Halstead* went to fetch the late Duke of *Ormond*, and was at the Deanary with the Bishop before he imbark'd; There are also Two Letters found in the Bishop's Close-stool from this Gentleman to his Lordship, which were read, and are only Appointments for Visits, but mention nothing of this Design; and, I think, there was a Coachman, that proved *Halstead* was an Hour with him some Days before he left *London*.

This, my Lords, was opened as a Matter of great Importance; But your Lordships must remember, that the supposed Design of *Halstead*'s bringing the late Duke of *Ormond* into *England*, is only proved by Hearsay. One of the Crew belonging to the Ship in which he went, has deposed, That it was the Common Report at *Bilboa*, that *Halstead* came there on that Errand.

How far common Fame is to prevail, I submit: But if this Hearsay were true, is every Person who was an Hour with this Gentleman before his Departure, supposed to be privy to this Project? And what a strain'd Construction is it to insinuate, That Bishop of *Rochester* knew of his Intention, because he received a Visit from *Halstead*, who was a Tenant under his Bishoprick? And this is the more

more extraordinary, since it has not been so much as pretended, that any Correspondence has passed between the Bishop and the late Duke.

They then produced Letters directed to one *Dunvill*, which were decyphered. And Mr. *Wills* was examined to prove, that they were rightly and justly explained.

My Lords, It very well deserves your Lordships Consideration, how far this kind of Evidence is to be admitted: It has appeared to your Lordships by the Oath of Mr. *Wills* himself, that it is an Art which depends upon Conjecture; for this Gentleman has confessed, that every Man is liable to a Mistake in this, as well as an other Sciences. He tells you, that he and his Brother Decypherer varied in One or Two Instances. He allows, that the *Cyphers*, which they were forc'd to leave in those Letters, might alter the Sense of them. And, therefore, I cannot but think, that an Accusation grounded on such Proofs, is uncertain and precarious.

The Person who is the Decypherer, is not to be confuted, and what he says must be taken for granted, because the Key cannot be produced with Safety to the Publick; and, consequently, (if his Conjectures be admitted to be Evidence) our Lives and Fortunes must depend on the Skill and Honesty of Decypherers, who may with Safety impose on the Legislature when there are not Means of contradicting them for want of seeing their Key.

My LORDS, In the Case of *Coleman*, the Key was Printed, as has been well observed by the Council at the Bar, and I am very much surprized, That Gentlemen of such Abilities and Integrity, as the Members of the Secret Committee in another Place (who were so exact as to print the *French* Originals to the translated Letters, that the World might see how just and candid the Prosecutors of the Plot were) did not, for the Satisfaction of the Publick, permit us to see the Key in Print, on the Truth of which depends such a Chain of Consequences.

I own myself intirely ignorant of this Art; But, as I should be very far from condemning a Man on my own Conjecture, I should much less do it on the Conjectures of others.

The Greatest Certainty Human Reason knows, is, A Mathematical Demonstration, and were I brought to your Lordships Bar to be try'd upon a Proposition of Sir *Isaac Newton*'s, which he upon Oath should swear to be true; I would appeal to your Lordships, Whether I should not be unjustly condemned, unless he produced his Demonstration, that I might have the Liberty of Enquiring into the Truth of it, from Men of equal Skill?

I cannot think any Man will allow Evidence of this Nature to be good; But if in this Case relating to the decyphered Letters to *Dunvill*, your Lordships should admit it, there is nothing mentioned in them that can affect the Bishop, neither is he at all nam'd in them, but they are only brought to prove the Conspiracy in *general*.

The Examinations of Mr. *Neve* are the next Points that are laid before your Lordships; And, indeed, I must do the Gentlemen at the Bar the Justice of saying, That they forbore mentioning any thing of them, when they open'd the Charge.

They were so sensible that such Proofs could not have the least Weight to affect the Bishop, that though in the Case of Mr. *Kelly* they were produced against him as very Material to support that Bill, yet they did not think proper to name them against the Bishop; which I am thoroughly perswaded is owing to what appeared at your Bar by the Examination of Mr. *Bingley*, and the

the Universal Opinion which every Person formed to have of the Villainy of Mr. *Neyno's* Transactions.

My LORDS, These Examinations were never signed by the Person, neither was he ever examin'd to 'em upon Oath. So that, were they of Consequence, and he a Person of Credit, they could not be admitted to affect any Person whatsoever, in any Court of Justice or Equity. I don't mean, That they could not be read according to the strict Rules of *Westminster-Hall*, which is admitted on all sides they could not; But I dare affirm, That no Credit can be given to 'em on any Account whatsoever.

The Person was closely confin'd, and consequently in the Hands of the Government, so that he was at that Time under the greatest Apprehensions, which might, in some Measure, prevent him from speaking Truth, with that Sincerity and Candour, of which every Person ought to be Master, when he is examin'd on Matters of such nice Nature.

Though these Papers were intirely given up by the Council for the Bill, yet the Extract of them was read, and they are the visible Foundation of this Charge; and if they are insignificant, the whole Accusation falls to the Ground: For the whole Proof of the Bishop's Dictating to Mr. *Kelly*, depends on Mr. *Neyno's* bare Affirmation.

The whole of what *Neyno* says, or is supposed to say, is, That Mr. *Kelly* told him he wrote the Bishop's Letters for him; Mr. *Kelly* denies it, and Mr. *Neyno* was so conscious that he had been guilty of many Crimes, that he endeavour'd to withdraw from Justice, and the Providence of God, it is said, intercepted him.

My LORDS, If you will consider the Improbabilities of this Evidence, although it were upon Oath, and signed by him, it cannot be supported. He tells you, That he was intrusted to draw up Memorials to the Regent; yet none of those have been produced, and yet it is apparent the Copies of them might, with Ease, have been obtained, if he had been as thoroughly pressed to deliver them, as he was to declare he wrote them.

These Memorials, he says, were wrote by the Order of Mr. *Henry Watson*, whom he takes to be the late Earl *Marshall*; And I am certain your Lordships don't think that Fact Material, when you came to a Resolution, That the Bishop of *Rochester* should not be at Liberty to ask, if Enquiry was made of the said *Neyno*, or if he gave any Satisfaction to the Lords of Council, touching that important Fact of *Watson's*, whom he took to be Earl *Marshal*, lying with him several Nights.

It was very well observed by a Learned Gentleman at the Bar, That nobody can believe the late Earl *Marshal* would have reposed so great a Confidence in a Person, who was intirely a Stranger to him, and of such little Note; and the *Jacobite* Party must be in a low Condition, when they make Use of such a Creature to write Papers of that Importance.

There is so much Improbability in this and other Points, and so much Contradiction in several Parts of his Examinations, that they appear to me, and must to all reasonable Men, as the Dictates of Fear, and not agreeable to Truth.

He mentions, That the Reverend Prelate, (for such I shall say call him) had some Favours offer'd him by the Court; But that cannot be true, and must be added to the rest of these Improbabilities.

But, My LORDS, what in my Opinion clears up all theſe Matters, and makes it impoſſible for me to give the leaſt Credit to this, or any other Part of the Charge, are, The ſeveral Teſtimonies of *Bingley*, *Skeen*, and *Stewart*.

I muſt obſerve to your Lordſhips, That the Two Firſt Perſons, *Bingley* and *Skeen*, are actually now in ſeparate Cuſtodies; and conſequently, could have no Communication one with another. The Third is at Liberty; but his Teſtimony is ſo thoroughly ſupported by Mr. *Gordon* and Mr. *Kynaſton*, that no Doubt can ariſe as to the Veracity of it.

Theſe Gentlemen, who are in the Hands of the Government, are under Hopes and Fears, and therefore, it is certain, when they ſpeak a Language, which, perhaps, may be diſagreeable to thoſe on whom they at preſent chiefly depend, it muſt be the Spirit of Truth that prevails.

Mr. *Bingley* was before us in the Caſe of *Kelly*, and was alſo examin'd at the Bar of the Houſe of Commons, though not upon Oath; and though he has been more ſeverely treated, as he told your Lordſhips, and more ſtrictly confined ſince his firſt Examination, yet he has perſiſted in his Story; And though he was ſo long at your Bar, and ſo many Queſtions put to him, yet he never varied in any one Circumſtance, but appeared conſiſtent through the whole Courſe of his Behaviour.

I ſhall not detain your Lordſhips with Recapitulating his whole Evidence, for I did it very fully on a former Occaſion. But your Lordſhips will remember, he told you, *Neyno* abounded in Money, which *Neyno* ſaid (after he was apprehended at *Deal*) *An Honourable Perſon* (and on this Occaſion, I hope, I may Name him) Mr. *Walpole*, *gave him:* and more particularly, he mentions 50 *l.* which *Neyno* ſaid he received the Night before he went to *France*.

Bingley told your Lordſhips, *That* Neyno *had aſſured him, he uſed to meet this Honourable Perſon in the Stable-Yard at* Chelſea; And, my LORDS, The Errand on which he was going to *France*, was, To diſcover ſome Secrets relating to Cyphers, which he would have ingaged *Bingley* to have done for him; and particularly, to get them, if poſſible, out of Mr. *Kelly*; *Which*, he ſaid, *could he obtain, would be of great Advantage to him.*

That *Neyno* had declared to him, *He would be even with Mr.* Kelly, *before he was aware of it*, or Words to that Effect; and that Mr. *Kelly* always ſeem'd averſe to any Acquaintance with Mr. *Neyno*, of whom he entertained a mean Opinion.

That *Neyno*'s Father refuſed him Money, which makes it highly probable that his Poverty was the Occaſion of his Villainy; and that when he was taken at *Deal*, he had declared to him, *Mr.* Walpole *expected to find the Plot above him; and ſince Mr.* Walpole *could not, he muſt make one for him.*

Neyno told *Bingley*, *That this Honourable Perſon had vowed Deſtruction to the Biſhop of* Rocheſter, *by ſaying, He would pull down the Pride of this Haughty Prelate*; which is ſufficient to convince your Lordſhips how little Regard ought to be had to the Hearſay Evidence of ſo falſe a Wretch.

Mr. *Bingley* ſays, That Part of this Account he had given to the Lords of the Council: and I could have wiſhed, that his Examination (as well as ſome others to the ſame Purpoſe, which were taken about the ſame Time) had been laid before the Parliament.

Mr. *Skeen*, who is alſo in Cuſtody, has depoſed, That he lay in the ſame Houſe with *Neyno*, and had ſome Converſations with him.

That

That *Neyno* had told him, *What he had said of the Bishop of* Rochester *was entirely false.* And,

That Mr. Walpole *had offer'd him a considerable Annuity to turn Evidence; and had given him Instructions before he was called in to the Lords, what Questions would be asked him, and what Answers he should make; and threatned him with* Newgate *if he would not comply.*

Skeen says further, *That* Neyno *swore* (and I hope the Reverend Bench will, in such a Case, permit me to repeat the Words) *by God, there were two Plots; One of Mr.* Walpole's, *against the Protesting Lords, and one of his, to bite Mr.* Walpole *of Money;* And this seems to be the only Time, that ever Mr. *Neyno* averr'd any Thing upon Oath.

To convince the World, what a Creature this *Neyno* was, he tells *Skeen* further, *That once at Lord* Townshend's *Office, he had a great Inclination to have Stabb'd the Chancellor of the Exchequer.* He tells you, That *Neyno* had wrote a Paper to declare, *That all he had said of Lord* Orrory *was false.*

My LORDS, The next Witness was Mr. *Stewart*, who was unfortunately in Custody when *Neyno* was brought to Town from *Deal.*

Stewart says, That he slept the second Night with *Neyno.* That *Neyno* had told him *what he had said of the Bishop, was False; and that Mr.* Walpole *had offered him a great Sum of Money, if he would Swear to what he said, and turn Evidence, which he declared he could not do.*

That Mr. Walpole *had taken him into another Room before he was Examined, and told him what Questions he would probably be asked, and what Answers he should give.*

He says, That *Neyno* told him also, *That he had like to have kill'd Mr.* Walpole, *and so put an End to the Plot: And that Mr.* Walpole *had given him a Paper of Directions, which he was to Answer, in order to be a Witness against the Protesting Lords.*

As a Confirmation of his Testimony, *Stewart* says, He told this to Mr. *Gordon* before Mr. *Neyno* was drowned, and to Mr. *Kynaston* before the Meeting of the Parliament.

Mr. *Gordon* confirms this Part of his Evidence, and assures your Lordships, That he had heard it from *Stewart* before the Death of *Neyno.* And Mr. *Kynaston*, a Gentleman of an undoubted Character, lately a Member of Parliament for *Shrewsbury*, has assured your Lordships, That he was acquainted with *Stewart*'s Account of *Neyno* before the Meeting of the Parliament; And adds this Circumstance, That when in the *Appendix* he saw those Six Questions printed, he shew'd 'em to *Stewart*, who seem'd rejoiced, and said, *You see, Sir, what I told you is true.*

Such concurring Testimonies from Persons kept so separate, and who are speaking against their own Private Interest, must have the greatest Weight, and must at least prevent any Rational and Impartial Person from giving the least Credit to the bare Hearsay of this *Philip Neyno.*

If any doubt could remain, as to the Validity of this Testimony, it is sufficiently confirm'd by the Persons brought to disprove it.

The Chancellor of the Exchequer himself, does not pretend to deny that *Neyno* told these Things, but only adds other Circumstances to Convince you of *Neyno*'s Villainy; and assures you, That at the Time he was receiving Favours from him, he was thoroughly convinc'd he intended to cheat him, which was the Occasion of his being apprehended.

He

He own'd the Tranſactions between them before *Neyno* went to *France*, and particularly the Money mention'd by *Bingley*, which are Proofs that *Neyno* muſt have diſcloſed theſe Secrets, ſince they could not come from Mr. *Walpole*, and He and *Neyno* only were privy to it.

Mr. *Walpole* has ſhewn your Lordſhips the foul Draught of the Queſtions mention'd by *Stewart*; and when he denies that Part of *Neyno*'s Declaration relating to the Inſtructions given him before the Examinations, He owns, he was twice alone with him; once the firſt Night of his being brought to Town, and the ſecond time, when he gave him the Paper of Directions, which might be Foundation enough for *Neyno* to frame ſo Notorious a Falſehood.

The Witneſſes brought by the Council for the Bill, to the Character of Mr. *Bingley*, ſeem rather to confirm it than otherwiſe; and all agree, they never heard any thing againſt his Morality. —— They indeed have ſaid, he bore the Character of a *Jacobite*; and ſuffered for having diſperſed a Libel: But Mr. Baron *Gilbert*, who was his Judge when that Puniſhment was inflicted on him, has told your Lordſhips, That his private Life was not vilified at his Trial, and that neither Perjury or Forgery was ever laid to his Door.

Though the Puniſhment he ſuffered was the Pillory, yet it is the Crime, and not the Puniſhment, that makes the Ignominy, and for this I can Appeal to the Learned Judges.

In order to deſtroy the Evidence of Mr. *Skeen*, they produced one *Pancier*, who tells you, That *Skeen* had revealed many Secrets to him relating to the Plot; and particularly of a Military Cheſt, which was collected to carry on theſe ſuppoſed Deſigns, and ſupport the *Jacobites*. — But I preſume every Body who heard the Two Perſons at the Bar, could not but remark the Steadineſs with which Mr. *Skeen* denied theſe Aſſeverations, and the Confuſion with which the other affirm'd them.

Mr. *Pancier* ſeem'd to drop ſomething which intirely deſtroys any Credit that could be given to him, by ſaying, That he had owned to Mr. *Skeen*, That he was a Friend to this Adminiſtration; and yet has Sworn, That after ſuch a Declaration, *Skeen* had ſtill perſiſted in his Story, and revealed ſome Part of this Intelligence to him. How far this is probable, your Lordſhips are the beſt Judges.

Mr. *Pancier* goes further, and tells you, That Part of this Converſation happened in St. *James*'s Park, in the Preſence of one *Duſour*. This *Duſour* was in the Hands of the Government, and I can't conceive why we have never ſeen him or his Depoſitions, when it would have been ſo eaſy to have brought this corroborating Witneſs to Mr. *Pancier*'s Teſtimony.

I can't but think, That the not producing this Man's Evidence, is a ſtrong Circumſtance to convince your Lordſhips he did not agree in the ſame Story with Mr. *Pancier*.

They alſo produced *Skeen*'s Attainder for the *Preſton Rebellion*: But there have been many Acts of Grace ſince, ſo that he is capable of being an Evidence; and there has nothing appeared to traduce his Character as a Man of Morals.

In order to ſhew your Lordſhips, That *Neyno* could not poſſibly make theſe Confeſſions to Mr. *Skeen* and Mr. *Stewart*, the Council for the Bill, maintain, That they will prove *Neyno* and the Priſoners were not together after the firſt Night.

This, my Lords, would be very Material, but I think it appears, by the Proofs brought to ſupport this Aſſertion, That they frequently have converſed one with another.

The

The firſt Witneſs they call'd, was Mr. *Crawford* the Meſſenger, in whoſe Houſe the Priſoners were in Cuſtody; and, my Lords, I can't but ſay, it ſeems very odd, they ſhould bring a Man to Swear he had done his Duty: He has told your Lordſhips, That Lord *Townſhend* had given him Orders, That *Neyno* ſhould be cloſe confined; and if, after that, it ſhould appear, That he had neglected ſuch Directions, there is no queſtion but that he inſtantly, and deſervedly, would have been removed out of his Imployment.

This Meſſenger, in this Situation, tells you, That after the firſt Night, they never convers'd, to the beſt of his Knowledge. That Mr. *Skeen* call'd *Neyno* a Rogue of an Informer; and ſpoke in very hard Terms of him; which I indeed think it appears the Fellow well deſerv'd.

Crawford ſays, That Mr. *Neyno* had ſome Paper, two Sheets of which he found miſſing. He likewiſe ſwears, That Mr. *Stewart* lay upon the Stairs; and owns, he had at that Time two Servant-Maids.

Mrs. *Crawford*, his Mother, ſwears, That, to the beſt of her Knowledge, the Priſoners were never together: That ſhe kept the Keys of the Rooms herſelf, but uſed to ſend up the Maid, *Hannah Wright*, with the Dinner. —— Your Lordſhips will obſerve, that both this Woman and her Son, ſwear To the beſt of their Knowledge only, and are far from poſitive Witneſſes.

Hannah Wright, when ſhe was firſt call'd, ſpoke in the ſame Language with them, though ſhe afterwards recollected herſelf better.

When the Biſhop came to Rejoyn, *Francis Wood*, *Thomas Wood*, and Mr. *Ruſſel* ſeverally ſay, That this *Hannah Wright* had declared to them, That ſhe uſed to let the Priſoners converſe together whenever ſhe had an Opportunity, which was when Mr. *Crawford* and his Mother were out of the Way; and that ſhe uſed to ſtand upon the Stairs, and give Notice when any Perſon came, that they might retire into their ſeveral Rooms. And the other Maid, whoſe Name is *Chriſtian*, has depoſed, That *Hannah* gave the Key of *Neyno*'s Room to *Stewart*, and ſeveral Times deſired *Stewart* to go up to him, and that they were together an Hour or more. And when *Hannah* was call'd a ſecond Time, ſhe own'd ſhe was turn'd away for Suſpicion of having help'd *Neyno* in his Eſcape; That ſhe has left *Skeen*'s Door open, who lay near *Neyno*; and that there was a large Hole in *Neyno*'s Door through which they might converſe.

She ſaid, That *Neyno* gave her a Paper, which ſhe was to convey for him, but that it was taken out of her Boſom, and burnt by one of the Priſoners.

When Mr. *Stewart* ſaid, That he ſat upon *Neyno*'s Bed the Second Night, and lay in the Garret where there was a Partition, but a Communication between 'em, *Hannah* ſaid, She could not be poſitive to that, but believes it true.

Mr. *Crawford*, when he was call'd to that Point, according to his uſual Cuſtom, denies it To the beſt of his Knowledge.

Your Lordſhips will now judge, whether the greateſt Credit is to be given to the Belief of a Meſſenger and his Mother, who are ſwearing that they did their Duty; or, to the poſitive Oaths of *Skeen*, *Stewart*, *Gordon*, *Kynaſton*, *Francis Wood*, *Thomas Wood*, *Ruſſel* and *Chriſtian*, confirm'd by the Confeſſion of *Hannah Wright*, when ſhe came to be Croſs-Examined and Confronted.

This, my Lords, concludes what has appear'd at the Bar, relating to Mr. *Neyno* and his Tranſactions, and I am pretty certain, every impartial Body muſt agree with me, That ſo far from giving the leaſt Credit to what he ſays, there have appear'd ſuch Circumſtances in the Tranſactions which are now come to Light, that

must make the greateſt Caution neceſſary, before we believe any other Part of the Charge.

Your Lordſhips will take Notice, That Mr. *Crawford* confeſſes Mr. *Neyno* had the Uſe of Paper, and found Two Sheets miſſing; and *Hannah Wright* owns ſhe had a Paper from him, which was burnt by one of the Priſoners. This, my Lords, undoubtedly was the Paper relating to Lord *Orrery*, mentioned by *Skeen* in his Evidence.

My LORDS, I am now coming to the great and only Foundation remaining to ſupport this Bill: If *Neyno*'s Hearſay, is not to be believ'd, which is the Proof that was offered to ſhew, that Mr. *Kelly* was the Biſhop's Secretary, and uſed to write for him; and particularly, That the Biſhop directed Three Letters, which were wrote in *Kelly*'s Hand, and tranſmitted to *France* under Cover to Monſieur *Gordon le Fils*.

Every Body muſt agree, that unleſs the dictating of theſe Letters be clearly prov'd, the Biſhop ought to be acquitted; and when, hereafter, this great Affair comes to be canvaſs'd by Poſterity, it will ſtand or fall as this Fact ſhall be ſtrongly made appear. ——

They firſt read *Plunket*'s Cypher, and Mr. *Vanradike* atteſts it to be his Hand-writing.

When this Piece of Evidence was offer'd, People were at a loſs to know what they intended to make of it, and little thought, that they ſhould be drove to make uſe of *Jackſon*, ſtanding for the *Pretender* in that Cypher, to ſhew that the Letter directed to *Jackſon* (one of the Three before mention'd affirm'd to be dictated by the Biſhop of *Rocheſter* to Mr. *Kelly*) was to the *Pretender*; I ſhall take notice of this extraordinary Proceeding when I come to conſider thoſe Letters. I ſhall only ſay now, That were Mr. *Plunket*'s Correſpondence to be regarded, the Plot is of a very deep Nature, for he has had the Impudence to inſinuate the moſt ridiculous Aſperſions againſt the Greateſt Men amongſt us.

Three of his Letters were Read out of Cypher, in Two of which Mr. *Johnſon* is named; that is Mr. *Kelly*; but neither Mr. *Kelly*, or the Biſhop of *Rocheſter* are allowed Places in his Cypher, and conſequently were not in an Aſſociation with him. *Johnſon* is only ſpoke of by *Plunket*, when he is mentioning Domeſtick News, and in no other manner than might be in every News-Letter that went by the General Poſt.

My LORDS, in order to ſhew that the Three Letters ſent under Cover to Mr. *Gordon le Fils*, were Mr. *Kelly*'s Hand-writing, which they very juſtly thought was neceſſary to be made appear before they proved that the Biſhop was concerned in them; they produced a Letter of the 20th of *Auguſt*, which a Clerk of the Poſt Office ſwears was ſtopt at the General Poſt Office.

To convince us this Letter is Mr. *Kelly*'s writing, *Hutchins* the Meſſenger ſays, To the beſt of his Knowledge, it is Mr. *Kelly*'s Hand; and at the ſame time owns, he never ſaw him write ſince after his Commitment, and then he ſtood by him while he wrote Two Letters, one to Lord *Townſhend*, the other to Mr. *Delafaye*; Thoſe Letters were produced at the Bar, and therefore every Lord in the Houſe is as good a Judge of the Similitude as the Meſſenger, who has lately been reſtored into Favour, on what Account I cannot tell.

If Mr. *Kelly* during his Confinement, counterfeited and diſguiſed his Hand, then the Meſſenger's Evidence can't be of any Weight; and if he wrote as uſual, then every Perſon is equally capable of framing an Opinion of it who ſees the Three Letters.

The next Witneſs, is *Malet*, who ſwears, he has ſeen him direct Letters, but can't tell how long ſince he ſaw him write, nor how often.

The Perſons who contradict this Evidence are ſo poſitive, ſo clear, and ſo concurring in their Teſtimony, that no Doubt can riſe upon it.

Mr. *Bingley*, when he was ſhewn this Letter, ſwears it is not like his Hand-writing.

Mr. *Brown*, a Peruke-Maker, well vers'd and acquainted with his Writing, when he was ſhewn the Letter of the 20th of *Auguſt*, and the Date of it hid, by the Counſel for the Bill (ſo that he could not know what Paper it was before him) ſwears, it is not his Hand-writing: When the Letter to *Delafaye* was produced, he declared, That was his Hand-writing: When another Paper was ſhown, I (think, it was the Marriage Articles) he ſaid, That was more like his Hand-writing than that of the 20th of *Auguſt*, but he did not believe it was wrote by him; and when they queſtion'd him upon the Letter to Lord *Townſhend*, he ſwore it was Mr. *Kelly*'s Hand-writing.

Mr. *Pickering*, who had Occaſion to know Mr. *Kelly*'s Hand, having lent him ſome Money, and received ſeveral Notes and Letters from him during that Tranſaction, does agree with Mr. *Brown* in every particular and moſt minute Circumſtance; which is a clear and evident Proof, that this Letter of the 20th of *Auguſt* was not wrote by Mr. *Kelly*.

The Difference, which they tell your Lordſhips, they obſerve between the Cut of the Letters in that of the 20th of *Auguſt* and the others, is, That one is longer and ſtraiter, the other wider and ſhorter, which is obvious to any Body that will look on both, and is a Confirmation of their Veracity.

The Proſecutors of the Plot might have prov'd this better, and not have been driven to the Teſtimony of a Meſſenger to ſupport this great Foundation of their Charge. It is notorious what Search they have made for Evidence of all kinds; and as Mr. *Kelly* was Educated in a College, they might eaſily have found credible Witneſſes to that Point, if thoſe Letters had been wrote by him.

In the Caſe of Similitude of Hands, when it has been the moſt clearly and poſitively proved, as on the Tryal of Colonel *Sidney*, it has been eſteemed to be Cruel, that a Man ſhould be convicted on ſuch kind of Evidence; and the Attainder of that unfortunate Gentleman was reverſed for that Reaſon.

In *Sidney*'s Tryal, his Bankers ſwore, They uſed to pay Bills drawn by him in the Hand-writing they were ſhewn, and no Perſons could contradict them; and yet the Sentence againſt him was a great Blemiſh to that Reign. The Great Lord Chief Juſtice *Holt*, in the Caſe of *Crosby*, refus'd to admit it; and the Lord Chief Baron *Bury*, on *Francia*'s Tryal, follow'd that Example.

At preſent, give me leave to ſay, There is no Evidence that it is Mr. *Kelly*'s Hand, and there is poſitive Proof that it is not. —— Therefore, we who live under ſo Equitable, Juſt, and Happy a Government, can never Convict a Man, in theſe Days of Liberty, on ſuch inſufficient Conjectures.

They next produced the Three Letters, which, they would inſinuate, were wrote by *Kelly*, and dictated by the Biſhop, which were mention'd by me before, and which were ſworn by the Clerks of the Poſt-Office, to have been ſent going to *Rome*.

The Bishop desires to Examine them relating to these Letters being detain'd, and would fain have known who took them out of the Mail; this he thought was proper for him to demand, since he seem'd to insinuate, That he question'd their ever having been in the Post-Office. But your Lordships would not suffer any Enquiry to be made on this Head, and Voted it inconsistent with the Publick Safety, and unnecessary for the Defence of the Prisoner, to permit any further Questions to be ask'd in relation to this Important Affair.

These Honest Gentlemen, the Clerks of the Post-Office, have deposed further, That the Papers produced, are True Copies of the Originals detain'd by them; though at the same Time, they confess, they never examin'd them after they had Copied them.

They positively swore further, That the Originals were of the same Hand with the Letter of the 25th of *August*, tho' they affirm this barely upon Memory, never having mark'd any Letter in order to know it again; and one of 'em declared upon Oath, That he did not believe there could be such an Imitation of *Kelly*'s Hand as could deceive him, though the whole House agrees, That Hands may be Counterfeited so as to deceive the Men that wrote them.

They own they never compared two Original Letters between the 24th of *August* and 25th of *April*, though they might have stopt a Letter one Post, without Prejudice to the Government, in order to be more certain in their Evidence.

Thus, my Lords, should this Bill pass, this great Man must fall by the Dependance this House must have on the Memory of these Clerks.

Mr. *Lewis*, who has long serv'd in the Secretary's Office, tells us, That frequently Letters and Seals used to be Counterfeited; and, in a more particular manner, by one *Brocket*, who excelled so much in this Art, that he has cheated many Persons, and has so far deceived 'em, that they have not known his Copy from their own Originals.

When these Letters, thus attested, came to be Read, they are in Cypher, so that it must again depend on the Honesty of a Decypherer, before they can possibly be made Treasonable.

Mr. *Wills* declares, They were truly Decyphered according to the best of his Judgment and Skill; and more particularly, that the Number 1378, which is subscribed to the Third Letter directed to *Jackson*, stands for the Letter *R*. But when some Lords ask'd him a Question, which perhaps had he answered, might have proved him to be under a Mistake; he refuses to give an Answer, either in the Affirmative or Negative, for fear of Revealing his Art. Your Lordships thought proper to prevent any further Cross-Examination of this Gentleman, by a Resolution.

Mr. *Wills* says, He shew'd these Letters decyphered to my Lord *Townshend* before he communicated them to Mr. *Corbire*, who is a Clerk in the Secretaries-Office, and then he says, That Mr. *Corbire* and he agreed.

Before these Letters can yet prejudice the Bishop, the Cant Names in them must be explain'd according to the Key, which the Prosecutors of the Plot have made; And in Order to it, we must believe, That *Jackson* stands for the Pretender, because Mr. *Plunket* gave him that Name in his Cypher. Can there be a greater Absurdity than to imagine a Person of the Bishop of *Rochester*'s Capacity, should borrow a Name of that Consequence, from so insignificant a Wretch as *Plunket*, who it does not appear ever saw him?

In-

Indeed, the Council for the Bill did not read these Letters against the Bishop, since they had no Proof of his Dictating of them, and they were only read on Account of the general Conspiracy.

I must observe, It was a great Artifice of these Learned Gentlemen, Whenever there was a Piece of Evidence to which the Bishop objected, they constantly pretended, they produc'd it to the Plot in General; for they knew it could not be admitted against the Reverend Prelate; But yet when they came to sum up, they applied them to this Particular Case; which is not agreeable to that Candour that is necessary on such Occasions.

If your Lordships should be of Opinion, that *Kelly* wrote 'em; that they were stopp'd at the Post-Office; that they were duly copyed; that they were truly decyphered, and the Cant Names explain'd; Yet still this cannot affect the Bishop, unless it be fix'd upon him that he dictated them: Two of them were sign'd *Jones* and *Illington*, and to induce your Lordships to believe the Bishop was Guilty, as they affirm'd, they endeavour to prove those Names must denote him. And, in Order to it, they read some Letters, affirm'd in the same Manner (as before mention'd) by the Clerks of the Post-Office, to be his Hand Writing; But first they read a Cypher taken upon Mr. *Dennis Kelly*, and sworn by the Messenger *Hutchins* to be wrote by *George Kelly*.

I can observe nothing upon this Cypher, but that the Bishop of *Rochester* is not mention'd in it, which seems very extraordinary, and is not a Proof of the Reverend Prelate's being ingaged in a Conspiracy.

The Letters they read of Mr. *Kelly*, are of no Moment, and are only calculated to fix the Names of *Jones* and *Illington* upon the Bishop.

They give an Account of his Lady's Death, the Bishop's own Illness, his going to and from *Bromley*; and in some of them, the Dog *Harlequin* is mentioned.

It seems repugnant to Reason, that in a Treasonable Correspondence of this Importance, a Gentleman should venture his Life to give an Account of the State of one Person's private Affair, and entertain his Friends Abroad with no other Business in such a Tract of Time.

In the Letters directed to Mr. *Andrews* at the *Dog and Duck*, which are proved to have been received by Mr. *Kelly*, *Jones* and *Illington* are not named, and those in which we find them, were such as pass'd through the Post-Office, and were attested like those under Cover to *Gordon* & *Pitt*.

It is not likely, that in a Transaction of so secret a Nature, Mr. *Kelly* should take such Pains to give such a Description as might give the least Room for a Suspicion that the Bishop was concerned; much less to have mentioned so many Particulars, as it may be suggested he has done, if there could be any Possibility of wresting the Meaning of *Jones* and *Illington*, and interpreting of them to mean the Bishop.

William [illegible] the Bishop's Coachman, is brought to prove the particular Times of the Bishop's being in or out of Town, in order to shew, that they agree with the Times mentioned of *Jones* and *Illington* in the intercepted Correspondence; and he refreshes his Memory by a Book of *Memorandums*, which might have been destroyed, if it had been apprehended by the Bishop's Friends, that such Evidence could affect him.

What

What they next attempt, was to shew, That the Dog brought over by Mr. *Kelly* from *France*, and which Mrs. *Barnes* swears, That he once told her was for the Bishop of *Rochester*, was a strong Circumstance to fix the Name of *Illington* on the Bishop.

My LORDS, Mrs. *Barnes*, who is under the Custody of a Messenger, is the only Witness to this Point, and what she says, is only Hearsay from *Kelly*: She owns that *Kelly* never told her so but once, and that was when she thought to have kept it for herself; And, indeed, it might be barely an Excuse to prevent his parting with it, for he had promised to bring her such a Present before he went to *France*.

She owns, that to her Knowledge, the Bishop never saw the Dog, nor sent any Message about it, which seems to be very extraordinary, that if this Present was of such great Consequence, he should not have had Curiosity enough, at least, to see it: An Affidavit was read from *Bermingham*, a Surgeon in *Paris*, which says, That he gave this Dog to Mr. *Kelly*, for Mrs. *Barnes*.

Before I leave this Circumstance of the Dog, it is proper to observe another great Improbability, which is, in a Letter wrote a few Days after the Death of the Bishop's Lady, it is said, Mrs. *Illington* was in great Tribulation for the Loss of poor *Harlequin*; and can it be supposed, That at a Time when the Bishop was in Affliction for the Death of his Wife, he should indecently discover so much Grief for such a Trifle?

I think this is sufficient to convince any Person whatsoever, That this Correspondence is of a very extraordinary Nature.

Mrs. *Barnes* has told your Lordships, That Mr. *Kelly* came from *France* the 11th of *April*.

My LORDS, I am now come to the only Piece of Evidence that seems particularly levelled at the Bishop: Which is, The Proof that has been given of the Dictating those Letters; and unless this be clearly and plainly made appear, I cannot conceive that any Thing can be laid to this Prelate's Charge.

Unless it is evident, that the Bishop did dictate as alledged, I cannot think any of your Lordships can vote him Guilty according to the Rules of Justice; for no Man is safe either in his Life, Liberty or Fortune, if he may be deprived of either, on Account of a Correspondence, in which it does not appear he was concerned. Though your Lordships should so far credit the precarious Evidence, at your Bar, as to believe that *Jones* and *Illington* stood for the Bishop of *Rochester*; yet, unless it is plain, that it was with his Privity, it is certainly impossible this Bill should pass; And if it should, it will hereafter be in the Power of any two Men, one at Home, and one Abroad, to ruin the most innocent Person, by entring, without his Knowledge, into a Correspondence of this Nature.

If the being named in Treasonable Letters, be a Crime, though it does not appear it was with the Privity of such Persons, I will submit to your Lordships, how far Men of the greatest Zeal to the present Establishment, are to be affected by Mr. *Plunket*'s Insinuations.

No Man ought to suffer for the Suggestions of another Person, unless it appears he has given great Foundation for them. And in this Case, would it not be most extraordinary and most unjust, to punish this Reverend Prelate, for a Crime which there is no Proof he ever committed? I mean, the Dictating of these Letters. And if, on the other Hand, the unfortunate Circumstances of his

Affairs

Affairs has furniſhed him with Means of ſhewing, beyond Contradiction, that he could not be concern'd in the Letters of the 20th of *April*; That for a conſiderable Time before, he could not ſee Mr. *Kelly*; and that there never was an Intimacy between 'em; Theſe, My LORDS, I hope, every Man who gives his Vote for the Rejecting this Bill, has the ſtrongeſt Evidence of his Side to ſupport his Opinion; and need not be afraid or aſhamed to own it here, or any where elſe.

This Part of the Evidence being of great Conſequence, I muſt beg your Lordſhips Attention, whilſt I recapitulate the Heads of it as clearly and diſtinctly, as poſſibly I can.

The Firſt Witneſs they call'd, was *Flower*, a Chairman, who ſwears, That he carried *Kelly* twice or thrice to the Deanary; but that the Biſhop was never at Home, and conſequently did not ſee him. His Partner ſwore, He had carried him, with *Flower*, one of thoſe Times.

The next Perſon produced, was a Porter, one *Vanlear*, who depoſed, That he went about *Chriſtmas* was Twelve-Months, twice, with Meſſages from *Kelly* to the Biſhop; The laſt of which Times, he carried ſome *Beaver* Stockens; That the Biſhop ſent for him up Stairs, gave his Service to Mr. *Johnſon*, and thank'd him for his Preſent.

Mrs. *Kilburne*, at whoſe Houſe Mr. *Kelly* lodged, ſays, That once a Servant came from the Biſhop, to know how Mr. *Johnſon* did, and was ſorry he could not have his Company at Dinner.

William Wood the Biſhop's Coachman, ſays, He once ſtopp'd in *Bury-Street*, but does not know for what; and that the Biſhop ſent a Servant ſomewhere, who preſently returned. And,

Lloyd, who keeps the *Star and Garter* in *Palace-Yard*, has told us, That *Neyno* once came to his Houſe, and told him, He ſtaid for an ingenious Gentleman, who was gone to the Biſhop of *Rocheſter*'s Houſe.

This, my LORDS, is all the Proof they offered of this Intimacy, from which they would infer, That the Biſhop dictated theſe Letters, and is conſequently Guilty of the Crimes laid to his Charge.

If your Lordſhips conſider what was produced on the other Side, I am ſure you muſt agree there is no Foundation for this Aſſertion.

Mrs. *Kilburne* denies, to the beſt of her Knowledge, that the Biſhop ever came to her Houſe, or that his Coach ever ſtopp'd there, or ever was ſent for *Kelly*.

That *Kelly* did not go out of Town, from the Time he came from *France*, 'till he was taken up, the 19th of *May*, and never lay out of her Houſe one Night.

This, my Lords, was confirmed by her Maid *Anne Ellis*.

Mrs. *Barnes* ſays, She never heard of any Meſſage from the Biſhop to *Kelly*, nor ever had any Converſation with him about the Biſhop.

William

William Wood the Coachman, who liv'd with the Bishop four Years, has declared, that the Bishop of *Rochester* never sent him with his Coach to *Gray's-Inn* to fetch any Person from thence; That there was no Stranger at *Bromley* for a Fortnight before his Lady died, which was the 20th of *April*; That no-body could come but in a Coach, or on Horse-back; but he must know it; That he never saw such a Person as Mr. *Kelly*, 'till he was shewed him at the *Tower*; and, That the Bishop went ill of the Gout to *Bromley* the 12th of *April*, and did not return to *London*, 'till the 7th of *May*.

Malone, Mrs. *Barnes*'s Servant, says, That she never saw the Bishop, or any of his Servants, with Mr. *Kelly*.

Thomas Grant, who has been the Bishop's Servant 9 Years, has declared, That the Bishop went to *Bromley* the 12th of *April* very ill of the Gout, and that no Stranger could come to him, from the Time he went to *Bromley*, 'till after his Wife's Death; That one or other of the Servants always sat up with him; And that no Person could visit him, but they must know it; for they were either in the same Room, or the next Room to him; and that no Stranger, except Dr. *Aldrige* and the Apothecary, came near him. *Grant* says, That he was forc'd to go to Town to attend at the *Westminster* Election of Scholars on the 21st of *April*, but left *Beauchamp* there, who came down for that Purpose on the 18th.

Beauchamp and *Steen*, who were the Two Servants that attended with *Grant*, swear the same thing.

Susannah Harvey, *Sarah Jones*, *Thomas Farnden*, *Elizabeth Higginson*, and all the Servants agree, That they never heard of any Person by the Name of *Kelly* or *Johnson*'s being with the Bishop. And,

Mrs. *English*, who took the Names of the Bishop's Visiters for many Years, does not remember, that she ever heard of such a Person as *Kelly* or *Johnson*. And I doubt not, but that every Lord must allow, that it is not possible to have a more clear, a more strong, or legal Proof to a Negative, than this is.

I must observe to your Lordships, that most of these Servants have been in strict Custody, and severely used, particularly *Farnden*, and yet your Lordship's see how unanimous they are in their Evidence; and their Testimony is so positive, that I cannot conceive any Person can suggest there was the least Intimacy between this Reverend Prelate and Mr. *Kelly*, and much less, that he could be with him to write the Letters that are dated the 19th of *April*.

Mr *Reeves* did, indeed, so far agree, as to be of Opinion, that they might have been wrote the 18th of *April*, which was the Day *Kelly* came from *France*: But, my Lords, Mrs. *Barnes* has deposed, He went to Bed the Minute he came Home, and lay there for a considerable Time; Besides, it is improbable, that Letters wrote the 18th should not be sent 'till the 19th. But all our further Argument was necessary to confute this absurd Supposition. The Earl of *Scarsdale*'s Death is mentioned in the Letter to *Chivers*, and that Noble Lord died the 19th, at which Time it has been prov'd, Mr. *Kelly* was not with the Bishop.

The Bishop of St. *Asaph* did, at first, peremptorily contradict one Part of Mr. *Grant*'s Evidence, by saying, He had received a Letter from the Bishop of *Rochester* at the Time which *Grant* has sworn he was so ill of the Gout that he could not write.

His Lordship positively affirmed, That he received this Letter on *Saturday* the 21st of *April* in the Morning, and saw *Grant* in *London* between Twelve and Two: But when it was proved that *Grant* did not leave *Bromley* 'till the Evening of that Day, and that another Person officiated for him as Butler in the Deanary, by Rea-

son

ſon of his Abſence, then the Biſhop ſeem'd to think himſelf under a Miſtake, and allow'd it might have been ſome time before.

His Lordſhip own'd, He never received a Letter from the Biſhop of *Rochester* before nor ſince, and therefore was a Stranger to his Hand.

I could have wiſhed this Reverend Prelate had recollected himſelf more fully, before he had given his Teſtimony in a Matter of this great Importance to one of his Brethren.

There was another Witneſs examined, which was *Crofton* the Shoemaker, to prove, that *Talbot* (who was ſaid to have received the Three Letters directed to *Gordon le Fils*) was at that Time in *London*, when he was ſuppoſed to have been in *Bologn*. *Crofton* ſwears he ſaw him in Town the 29th of *April*, and prov'd it by his Book.

There was another Perſon call'd, whoſe Name was *Donner*, that depoſed, *Gordon* own'd to him the receiving of this Pacquet; But an Affidavit was produced from *Gordon*, in which he denies it. *Donner*'s Evidence is only Hearſay, the other is poſitive.

My Lords, The Council for the Bill, produced ſome Papers which were taken in the Biſhop's Cuſtody when he was apprehended, and endeavour to draw very ill-natur'd and forc'd Conſtructions from them.

The Firſt was a Letter from the Dutcheſs of *Ormond*, in which ſhe acquaints him, *That ſhe had ſomething to ſend him, which ſhe could not truſt to a better Hand*; or Words to that Effect. And this they would pretend to inſinuate, were ſome treaſonable Papers.

I appeal to all Mankind, Whether it is not very extraordinary to ſuppoſe, that the Biſhop ſhould be preſumed to convey a Traytorous Correſpondence thro' that Channel. Every-body knows the Friendſhip which was between the Reverend Prelate and that Family, and it is not ſurprizing that this unfortunate Lady ſhould think him a proper Perſon to conſult, and intruſt with her own Affairs. Therefore I can't think, that theſe general Expreſſions can at all affect him.

The next they read, is a Paper found, or pretended to be found, at the Deanary, ſubſcribed to *Dubois*, but without Date; In this the Perſon who writes it, ſays, He received a Letter by Mr. *Johnſon*, to which he return'd an Anſwer in his Hand.

The Secret-Committee, at firſt, apprehended, that this was received by the Biſhop, and thus it paſs'd, 'till upon ſeizing a Letter wrote in the *Tower* by his Lordſhip, they found a Similitude in the Seals, which immediately inlightned them, and then it was preſently ſaid to have been wrote by the Biſhop.

They then wanted to fix this to be the Biſhop's own Hand-writing, and they could find no other Way of doing it, but pretending there was a Similitude between the *L*'s in this Letter, and thoſe which the Biſhop generally uſed. I believe it is the firſt Time that ever ſuch an Argument was brought to prove that the whole Letter has been wrote by a Perſon; much leſs was it ever pretended to be offered to a Court of Juſtice againſt any Priſoner whatſoever; But, I believe, there is no Man acquainted with the Biſhop's Hand, but ſees it is not wrote by him.

They would alſo affirm, that when in this Letter the Biſhop is ſuppoſed to ſay, That he received an Anſwer in Mr. *Johnſon*'s *Hand*, it muſt be underſtood to be his *Hand-writing*; which, I muſt confeſs, does not at all appear to be a neceſſary

Concluſion; for he might deliver his Anſwer into Mr. *Johnſon's* Hand, which, I think, is more natural to ſuppoſe than the other.

Your Lordſhips muſt judge, how improbable it is, that the Biſhop ſhould keep ſuch a Letter by him, which he wrote himſelf; or that, when ſuch Care is taken as the Proſecutors of the Plot themſelves ſay, for preventing any Perſon's diſcovering the Intimacy between Mr. *Kelly* and him, ſuch a Secret ſhould be truſted in Writing, and even without a Cypher.———The Two Seals which gave this Turn, are *Cicero*'s Heads, which are very common, and are to be found every where. They are one broke, the other whole, which muſt make it very difficult to judge of them; and it is allow'd, That, at beſt, it is but precarious Evidence.

If Mr. *Neyno* ſpeaks Truth, when he ſaid, The Biſhop had Notice of the Storm that threatned him, I am certain, that this Paper, if it could have been apprehended of Conſequence, would have been deſtroyed; But, I believe, it was impoſſible for him, or any-body elſe, to think it ſhould meet with ſuch an Explanation.

The next Letter they produced, which they ſeem'd to think material, was that which was ſeiz'd on his Servant going to Mr. *Morice*: In this he ſays, That the Evidence of *Plunket*, and thoſe People, could not affect him; but as he does not mention Mr. *Kelly*, they would have it preſumed, that this is a Proof, that *Kelly* could have ſaid ſomething of him; But, I think, this muſt appear to be a very ill-natur'd Aſſertion.

Your Lordſhips will conſider, he was then writing to his Son-in-Law; and therefore no great Accuracy was neceſſary.

In another Place, he ſays, That if they impeach'd him, he ſhould remain in Priſon for ſome time; and this they would decypher to be an Implication of his Guilt.———But, in my poor Opinion, it is the Reverſe; He ſeems to ſay, That if the Commons ſhould be induced to ſend up an Impeachment againſt him, he was ſo ſatisfied of his own Innocence, and your Lordſhips Juſtice, that he thought the Confinement till his Tryal, would be the only Misfortune that could attend him. The Example of the Earl of *Oxford* was recent in his Memory, and might juſtly create in him a Fear of undergoing a long Impriſonment.

It is objected, That he, in this Letter, makes no Proteſtations of his Innocence: But if you will conſider he writes to Mr. *Morice*, I believe every-body will agree, That ſuch Declarations were not neceſſary.

Mr. *Layer*'s Attainder was read; but it does not appear, that the Biſhop had any Correſpondence with him; therefore I can't conceive why we were troubled with it.

My LORDS, I have now gone thorough the whole Evidence that is brought to juſtify this extraordinary Proceeding, and muſt obſerve the Steps that have been taken to procure all the poſſible Means to work the Deſtruction of this Great Man.

You have ſeen his very Servants confined, who, it does not appear, were guilty of the leaſt Glymple of Treaſon.

Lawſon, a Baker of *Bromley*, who appeared at your Bar, has been employ'd to examine the Perſons in the Biſhop's Neighbourhood, in order to find the leaſt Particular that could amount to the Shadow of a Proof, and went ſo far as to offer *Wood* the Coachman, the Wages that were due to him, if he would have gone the Lengths that were required.

Mr. *Bingley* told us in the Caſe of *Kelly* (and as it has not been diſproved, it is to be taken for granted) that a Warrant was ſhewn by the Meſſenger, ſign'd by a Secretary of State, to carry him to *Newgate*, which he was told was unavoidable, unleſs he would own the Letter of the 20th of *Auguſt* to be Mr. *Kelly*'s Hand-writing; But it appeared the next Day to be nothing but in order to terrify him.

Mr. *Kelly* himſelf, has told your Lordſhips, That Mr. *Delafaye* offer'd him his own Terms, if he would have turn'd Evidence: And this was done to deſtroy the Biſhop of *Rocheſter*; or, To ſpeak in the Language mentioned at your Bar, *To pull down the Pride of this Haughty Prelate.*

Your Lordſhips may remember, That Mr. *Wearg* objects to the Biſhop's Servants, becauſe Two of them had Employments, as appears by his Lordſhip's own Letter; But, my Lords, When they were examined, they acquainted the Houſe, that it was upon reading of the *Report*, that they re-collected the Biſhop's Circumſtances before the Death of his Wife. And if every Man, who has a Place under the Biſhop, is not to be eſteemed a Free Agent when he is upon Oath, I hope it will be allowed on the other Hand, That thoſe who have Employments under the Government, ought not to be admitted; then all the Witneſſes, that have been brought to ſupport the Bill, from the Decypherer to the Meſſenger, will be diſcredited, and the whole Proſecution muſt fall to the Ground.

My LORDS, It has been a Hardſhip as has attended the Biſhop, that he has been forc'd to prove a Negative; and the Difficulty has been the ſtronger upon him, that your Lordſhips have not permitted Mrs. *Kelly* to be examin'd, as was moved by a Learned Lord in my Eye; and if the Gentleman had ſworn what he ſo ſolemnly affirmed at your Bar, relating to this Affair, I can't conceive we could have had the leaſt Debate.

The Noble Lords, who appear the moſt Zealous in this Proſecution, were thoſe who oppos'd the Examination of Mr. *Kelly*, which, in my poor Opinion, is a ſtrong Argument, That if he had been brought before us, he would have perſiſted in his Declarations of the Biſhop's Innocence.

The Reverend Prelate, has deſired of any Lord in the Adminiſtration, and even the Honourable Perſon who appear'd at your Bar, to declare, Whether any one ſingle Perſon had charg'd him (on their own Knowledge) of being guilty of any treaſonable Practice. And it has appeared to the contrary; Therefore this whole Charge is founded upon the ſlight Circumſtances and improbable *Inuendo*'s before mention'd.

Another Objection, which was raiſed, is, That Mr. *Kelly* made Reſiſtance, when he was ſeiz'd, 'till he had burnt ſome of his Papers; But, my Lords, I don't ſee any Reaſon to lay this to the Charge of the Biſhop.

Kelly is to anſwer for his own Actions, and is unfortunately like to ſuffer for 'em; A Perſon of his Age, might have many Letters in his Cuſtody, which he did not care ſhould be ſeen, and yet of a different Nature from a Traytorous Correſpondence.

After this Evidence is conſidered, I cannot think your Lordſhips will eſtabliſh ſuch a Precedent, which hereafter may be employ'd to ruin the Greateſt amongſt you; and if ever hereafter Pains and Penalties are unjuſtly inflicted on any Perſon, Poſterity will derive the Original of ſuch Bills, from the Proceedings of this Parliament; and what Opinion will be framed of us, ſhould this be paſſed into a Law, I ſubmit to every impartial Perſon.

It muſt be left to your Lordſhips Conſideration, Which will be of moſt fatal Conſequence to the Publick, The leaving this Precedent (of Condemning on ſuch kind of Evidence) like a Sword which your Enemies may take up when they pleaſe, or the Baniſhing the Biſhop of *Rocheſter*, in the Evening of his Days, who alone could do, in his ſingle Perſon, no Prejudice to the Conſtitution: If he were inclin'd to overturn it, as his Enemies ſuggeſt, he is in a better Situation Abroad, than at Home, to execute that Deſign, and direct the Counſels of the Diſaffected. The Ruin of one Man, will not heal the Wound, that the Paſſing of this Bill ſeems to make in the Government of this Kingdom.

It has been ſaid in the Debate, That the Biſhop ought to have made Proteſtations of his Zeal for his Majeſty and his Family; But, I think he took the moſt ready Way of Performing his Duty, when he ſhew'd himſelf Innocent of the Crimes laid to his Charge.

If he had made Uſe of any Expreſſions, which thoſe Lords blame him for omitting, the ſame *good Nature* would have call'd it *Hypocriſy*; and thoſe who are diſpleas'd with his *Silence*, would have accuſed him of *Inſincerity*.

My LORDS, This Bill ſeems as irregular in the Puniſhments it inflicts, as it is in its Foundation, and carries with it an unnatural Degree of Hardſhip.

It is Felony for his Children to correſpond with him: And in this Circumſtance, it is different from the only Bill that carries with it the leaſt Reſemblance of this: I mean, That for the Baniſhment of the Earl of *Clarendon*.

The Earl had flown from the Proſecution, and retired beyond Sea. The Charges againſt him were, principally, *For adviſing a Standing Army*; and another Article exhibited was, *That he had adviſed and procured divers of his Majeſty's Subjects to be impriſon'd againſt Law, in remote Iſlands, Garriſons, and other Places, thereby to prevent them of the Benefit of the Law, and to produce Precedents for the Impriſoning any other of his Majeſty's Subjects in like Manner.*

The 7th Article againſt him, was, *That he had, in a ſhort Time, gain'd to himſelf a greater Eſtate than can be imagin'd to be gain'd lawfully in ſo ſhort a Time; And contrary to his Oath, he hath procured ſeveral Grants under the Great Seal from his Majeſty, for himſelf, and his Relations, of ſeveral of his Majeſty's Lands, Hereditaments and Leaſes, to the Diſproſit of his Majeſty.*

There need not have been any Witneſſes of theſe Crimes, for they were apparent; and every body knew that he was *Prime Miniſter*; Yet Sir *Francis Goodier*, upon that Debate in the Houſe of Commons, declared the Sentiments which I expreſs'd at the Beginning, *That he was not againſt Proceeding, but unſatisfy'd to do it without Witneſs, it being like Swearing* in verba Magiſtri.

Another great Man, upon the ſame Queſtion, and an Anceſtor to a Noble Lord near me, ſaid; *That if the Parliament ſet aſide Law in this Caſe, we ſhould be happy to ſee Law declaring the Power of Parliaments.*

The Puniſhment for Correſponding with the Earl, was High-Treaſon, and then Two poſitive Witneſſes were neceſſary to convict; But, in this Caſe, one Corrupt, Terrified, and Perjured Perſon, may take away the Life of the moſt Innocent Man.

There is another great Misfortune which this Bill brings upon the Biſhop, which is, That he is incapable of receiving his Majeſty's Pardon: This, my Lords, is an Entrenchment upon the Prerogative: And what muſt make it the more ſevere in this Caſe, is, That His

Majeſty's Inclinations to Mercy (which are the diſtinguiſhing Characters of his Life) are ſtop'd by this Law, which the unfortunate Prelate might have Hopes of receiving, when he had merited it, by a Dutiful Behaviour to the Country that had ſent him to wander Abroad in Exile, and by his future Conduct have confirm'd, if poſſible, the Evidence he has given of his Innocence.

My Lords, in the Caſe of the Earl of *Danby*, your Lordſhips have declared, That his Baniſhment ſhould be no Precedent, nor draw into Example for the Time to come, and have ſo enter'd it in your Journals.

It has been proved, That this Reverend Prelate was at the time that he was ſuſpected to be acting in Treaſon, engaged in Studies of the moſt high Nature, which is a Circumſtance that ought to have ſome Weight.

If this Bill paſs into a Law, ſuch Evidence is eſtabliſh'd, and ſuch a Method of Proceeding introduc'd, as muſt effectually render all that is dear to us Precarious; and if ever, hereafter, we ſhould ſee a Wicked Adminiſtration, ſupported by a Corrupt Majority in Parliament, this Step, taken in theſe Times of Liberty, will be a ſufficient Precedent to give a Colour of Juſtice to the Actions of thoſe who ſhould be wanton in Tyranny.

The Reverend Prelate, who ſpoke before me, mentions ſome Caſes relating to Bills of Attainder, which, in my poor Opinion, differ very much from our preſent Queſtion.

The Attainder of Sir *John Fenwick*, was only to ſupply the want of a Witneſs, who had depoſed againſt him upon Oath before the Grand Jury, and who was ſpirited away by the Priſoner's Friends: But at preſent, your Lordſhips are to ſupply the Defect of Evidence, by condemning on improbable Conjecture. There was a Noble Lord in this Houſe the other Day, I don't ſee him now, who made the greateſt Figure in Oppoſition to that Bill: I wiſh we could have his Aſſiſtance on this Occaſion.

My Lords, ſince that Reverend Prelate has quoted ſome Caſes, he will permit me to remind him what has been formerly ſaid upon Acts of Attainder; That ſuch Bills, like *Siſyphus*'s Stone, have frequently roll'd back upon thoſe that were the chief Promoters of them.

This prudential Argument ſhould reſtrain us from being too forward with them at this Time of Day.

The Act for the Attainder of the Earl of *March*, paſs'd, becauſe he had been inſtrumental in procuring the Attainder of another Lord, under Pretence of a Letter, which the Record ſays, was no Evidence.

The

The Lord *Cromwell* is another known Inſtance of this Obſervation: He was the firſt who adviſed this violent Proceeding in *Henry* the 8th's Time; and it is Remarkable, that the Advice he gave to the Ruin of Others, prov'd, not long after, fatal to himſelf.

I have now given your Lordſhips the Reaſons why I am againſt the Bill. I fear I have tired your Patience, and ſhall therefore conclude with the Words of the Great Man I before mention'd; I mean, Sir *Heneage Finch*, in the Caſe of the Earl of *Clarendon*.—"We have an "Accuſation upon Hearſay, and if it is not made good, the blackeſt "Scandal Hell can invent, lies at our Doors.

F I N I S.